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REMARKS

Applicants appreciate the thorough review of the present application as reflected in the Final Official Action mailed January 27, 2005. To expedite prosecution of the present application and to narrow the issues for further consideration for the Examiner and/or appeal, Applicants have amended Claim 1 to incorporate the recitations of Claim 7, including the recitations of intervening Claim 6, Claim 21 to incorporate the recitations of Claim 27, including the recitations of intervening Claim 26, and Claim 41 to incorporate the recitations of Claim 47, including the recitations of intervening Claim 46. Applicants have cancelled Claims 6, 7, 26, 27, 46 and 47. Applicants request entry of the present Amendment After Final as Applicants submit that it places the application in condition for allowance or narrows the issues for further consideration or appeal. Applicants respectfully request the Examiner to take one final look at this rejection in light of the following remarks and to allow the present application.

The IDS

Applicants note that a Supplemental IDS was filed concurrently with Applicants' previous response. The IDS appears in PAIR as filed August 5, 2004. Applicants request that an initialed copy of the PTO-1449 form be returned with any subsequent communication.

The Claims Are Not Anticipated

Claims 1-60 stand rejected under 35 U.S.C. § 102(b) as anticipated by United States Patent No. 5,844,986 to Davis (hereinafter "Davis"). Final Action, p. 2. In the interest of brevity, Applicants will not repeat the arguments made in Applicants' previous response. To assure that the present response is fully responsive to the Final Action, Applicants incorporate the arguments from Applicants' previous response by reference to the extent applicable. Applicants will address the Response to Arguments portion of the Final Action below and, in particular, the rejection of Claims 6, 7, 26, 27, 46 and 47.

Applicants have amended Claim 1 to incorporate the recitations of Claims 6 and 7, Claim 21 to incorporate the recitations of Claims 26 and 27 and Claim 41 to incorporate the recitations of Claims 46 and 47. Applicants submit that Claims 1, 21 and 41 are patentable over the cited references for the reasons discussed in Applicants' previous response with

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reference to Claims 1, 21 and 40 and are further patentable for the reasons discussed below with reference to the rejections of Claims 6, 7, 26, 27, 46 and 47.

Turning to the specifics of the Response to Arguments section of the Final Action, the Final Action asserts that validating the integrity of a new BIOS program and deleting the new BIOS if it is invalid teaches the use of update rules being included in a certificate. Final Action, p. 2. As discussed in Applicants' previous response, the cited portions of Davis appear to describe the standard use of a certificate to authenticate the source of a BIOS upgrade. See Davis, col. 4, lines 19-46. The Response to Arguments section fails to explain how the cited portions of Davis describe including update rules other than to state that the digital signature validity check and the revision date validity check constitute update rules. Final Action, p. 2. However, even if the data used for a digital signature validity check or revision date validity check is contained in a certificate, that does not necessarily mean that the rule as to how that data is used to determine validity is contained in the certificate. Merely including data that may be used in applying a rule does not provide a rule. Accordingly, Applicants submit that amended Claims 1, 21 and 40 are not anticipated by Davis for at least these reasons.

Applicants further submit that amended Claims 1, 21 and 41 are patentable over Davis because the recitations added to these claims from the dependent claims 6, 7, 26, 27, 46 and 47 are not disclosed by the cited portions of Davis. In particular, Claim 7 depended from Claim 6, which depended from Claim 1 and, thus, as amended, Claim 1 recites, in part:

extracting the update application rules from the at least one extension of the obtained certificate;

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wherein the update application rules comprise rules which identify installation information provided with the update image and wherein the step of updating the programmable memory comprises updating the programmable memory utilizing the installation information provided with the update image; and

wherein the installation information comprises an install program and wherein the step of updating the programmable memory utilizing the installation information comprises executing the install program to write the update data to the programmable memory.

Amended Claim 1, emphasis added. Similar recitations are found in amended Claims 21 and 41. Thus, as recited in amended Claim 1, the extension of the certificate includes rules that identify installation information provided with an update image and that the install

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information comprises an install program that, when executed, writes the update data to the programmable memory.

In rejecting Claim 7 as anticipated by Davis, the Examiner states that Davis "does not specifically teach for the BIOS management utility software to be obtained via download." Final Action, p. 4. Thus, the Official Action acknowledges that Davis does not anticipate amended Claims 1, 21 and 41 as each of the recitations of amended Claims 1, 21 and 41 are not found in the cited reference. The Final Action further rejects the claims as anticipated by stating that "[i]t would have been obvious to a person of ordinary skill in the art at the time of the invention to obtain the BIOS management utility software with the BIOS upgrade via download." Final Action, p. 4. What would be obvious to a person of skill in the art is irrelevant to an anticipation rejection as anticipation requires that each of the recitations of the claim be found, either expressly or inherently, in a single prior art reference. What is obvious in light of a reference is not relevant to anticipation. As such, Applicants submit that the Examiner has established that Claim 7, and, therefore, amended Claims 1, 21 and 41, are not anticipated by Davis.


Furthermore, Applicants submit that even if "[i]t would have been obvious to a person of ordinary skill in the art at the time of the invention to obtain the BIOS management utility software with the BIOS upgrade via download" from Davis, that is not what Applicants have claimed. As discussed above, amended Claims 1, 21 and 41 recite that the rules provided in the certificate extension includes rules that identify installation information provided with the update image, wherein the install information identified by the rules comprises an install program. The Final Action does not even address these portions of Claim 7 that have been incorporated into Claim 1. Corresponding recitations are found in the independent system Claim 21 and the independent computer program product Claim 41. Accordingly, Applicants submit that amended Claims 1, 21 and 41, and the claims that depend from these claims, are patentable over Davis.

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Conclusion

In light of the above discussion, Applicants submit that the amended Claims 1, 21, and 41 are not anticipated by Davis, as is acknowledge by the Examiner in rejecting, for example, Claim 7, and, therefore, the present application is in condition for allowance, which action is respectfully requested.

Respectfully submitted,


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